

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2637 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT SMALL INDUSTRIES	CORPORATION KARMACHARI UNION
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Versus

GUJARAT SMALL INDUSTRIES	CORPORATION LTD.
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Appearance:

MR AK CLERK for Petitioners
MR PV HATHI for Respondent No. 1
MR SH SANJANWALA for Respondent No. 3, 4, 5, 6, 7, 8

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/02/2000

ORAL JUDGEMENT

The petitioner, Association of employees of the Gujarat Small Industries Corporation (hereinafter referred to as "the Corporation") has challenged the appointments of respondent Nos. 3 to 8 on the posts of Senior Assistant under the Corporation mainly on the

ground that the contesting respondents do not possess the educational qualification of higher second class degree in commerce and that the percentage of marks obtained by the contesting respondents was less than 55%.

2. While the basic facts are not disputed in the reply affidavit filed on behalf of the Corporation, the following submissions are made :-

(i) The petition suffers from delay, laches and acquiescence as the appointments of the contesting respondents were made in the months between October 1985 and May 1986 and they also came to be confirmed in service between May 1986 and February 1987 although the petitioner union was aware about their appointments. The petition came to be filed only in June, 1987. Hence, the petition suffers from gross delay.

(ii) None of the fundamental rights of the petitioner are violated.

(iii) On merits, it is contended that although the Recruitment Rules (Annexure "B") for the post in question required that the candidate should have possessed degree of any recognized University with higher second class in any faculty of Arts, Commerce, Science or Law and the advertisement also mentioned that the candidate shall possess higher second class degree in Commerce from a recognized University, the Rules did not specify any particular percentage for treating the candidate as possessing higher second class degree. It is, therefore, contended that the Corporation had fixed the norms for this appointment well in advance and had decided to consider the candidates who had secured 45% marks in Commerce as eligible.

3. Considering the fact that the petition was admitted after hearing the respondents and after taking into consideration the affidavit in reply which was already filed at the admission stage and considering the fact that the Union had made a representation in July 1986 and that the Corporation itself was responsible for the delay in giving the petitioner information about the marks obtained by the contesting respondents at the relevant examination, it cannot be said that the petition deserves to be dismissed on the ground of delay, laches or acquiescence. It also cannot be said that the petitioner union does not have any right to challenge the

appointments of ineligible persons. The petitioner-union is an association of employees all of whom are citizens of India and are entitled to fundamental right under Article 16 of the Constitution. Even otherwise the right of equality is available under Article 14 of the Constitution and it is, therefore, not necessary that each individual aggrieved employee should file separate petitions.

4. As far as the merits of the controversy are concerned, the Corporation does not appear to be on a firm footing in submitting that since the rules do not specify any percentage of marks for treating the candidate as possessing a higher second class degree, it was open to the Corporation to fix the eligibility percentage at 45%.

Anyone who has even a nodding acquaintance with the academic world knows that a higher second class degree means obtaining atleast 55% of marks at the relevant examination. While different examination bodies may prescribe different percentage for awarding a second class, a first class and distinction, the Corporation has not cited any instance to show that any University or examination body treats a person getting 45% marks as having a higher second class degree.

5. As far as the allegations made for challenging the appointments of D.B. Soni and P.D. Modi are concerned, the same are dealt with in paragraphs 9 and 10 of the reply affidavit. It may be noted that P.D. Modi was appointed as an Assistant and it is stated in the reply affidavit that P.D. Modi had got overall 56.16% marks in the relevant subject of the Commerce degree and, therefore, his appointment cannot be said to be contrary to the Rules. As regards appointment of D.B. Soni, it is pointed out that his brother K.B. Soni had not participated at the time of interview and, therefore, it is not true that K.B. Soni had directly participated in the selection of D.B. Soni and that, therefore, the Committee cannot be said to have been biased in favour of D.B. Soni.

6. In view of the above discussion, while the appointments of respondent Nos. 3 to 7 on the posts of Senior Assistant do appear to be contrary to the Recruitment Rules as well as the advertisement for the posts in question and ordinarily those appointments might have been required to be struck down, the Court refrains from adopting such a course of action because out of the six contesting respondents, two have already voluntarily

retired from service in September, 1999 and the other four contesting respondents have already put in about 15 years service; invalidating their appointments after a passage of 15 years would expose them to inconceivable consequences as they would be age barred for appointment in any other public service.

Nonetheless even while declining to interfere with the appointments already made by the respondent Corporation on the above ground, the Court cannot help observing that the respondent Corporation did act contrary to the recruitment rules in appointing respondent Nos. 3 to 7 on the posts of Senior Assistant, even though they possessed less than 55% marks at the Commerce degree and although the recruitment rules prescribed higher second class at the degree examination as the minimum eligibility criteria.

8. Subject to the aforesaid observations, the petition is dismissed. Rule is discharged.

February 25, 2000 (M.S. Shah, J.)
sundar/-